

# **LAND BANKING**

## **HANDBOOK FOR PUBLIC**



**Montana Department of Natural  
Resources and Conservation**

**SEPTEMBER 2004**

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## **1. INTRODUCTION**

The State of Montana has the ability to sell state trust land (land). However, until the passage of the Land Banking statute (§77-2-361 through 367, M.C.A.), there was no provision to purchase replacement land. This resulted in a net loss of trust land acreage.

With the advent of Land Banking, it is now possible for the Department of Natural Resources and Conservation (DNRC) to sell land to the public and put the proceeds in a Land Banking account. The combined funds from several sales can then be used to purchase parcels which produce a higher level of income. This results in more income to the trust beneficiaries (Univ. of MT, MSU, Common Schools, etc.).

The purpose of this Handbook is to provide a brief overview of the rationale and process concerning the sale of land to the public, and the acquisition of land by the state. The rules governing the sale or acquisition of land will implement the law, and are contained in their entirety in the Land Banking Rules, available on the DNRC website ([http://dnrc.mt.gov/trust/land\\_banking/](http://dnrc.mt.gov/trust/land_banking/)). The rules and law supersede information provided in this Handbook or on the website. If, after reviewing the Handbook, you have specific questions about the process, we suggest you review the Land Banking Rules, or contact the Trust Lands Management Division (see Appendix C for contact information).

## **2. PURPOSE OF LAND BANKING**

The purpose of the Land Banking program is to “temporarily hold proceeds from the sale of trust land pending the purchase of other land, easements, or improvements for the benefit of the beneficiaries of the respective trusts”.

## **3. GOALS AND PROVISIONS OF THE LAW**

The goals of Land Banking are:

1. To diversify land holdings in order to minimize the risk of loss;
2. To maximize the sustained rate of return to the trusts;
3. Improve public access to state trust land;
4. Consolidate land ownership.

The Land Banking statute (§77-2-316 through 367, MCA) says:

1. Up to 100,000 acres of land can be sold, and the proceeds used to buy other parcels of land.
2. Seventy-five percent of the parcels must be isolated (no public access), and 25% can be accessible.
3. Only 20,000 acres can be sold before another parcel or parcels must be purchased.
4. Lessees have preference on land they presently lease in that they can match the high bid on the parcel if they, the Board, or the Department nominates it for sale.
5. Land cannot be sold to the federal government.
6. Land, easements or improvements acquired by the state must be evaluated to insure they produce equal or greater income than the land that was sold.
7. Land Banking is a pilot program, and will be reevaluated in 2008 to insure it is accomplishing the intent of the law.

## **4. WEBSITE**

Ongoing information on the Land Banking program is available on the DNRC website at [http://dnrc.mt.gov/trust/land\\_banking/](http://dnrc.mt.gov/trust/land_banking/). This site will contain information about:

1. Parcels available for sale with information such as:
  - a. A legal description, location, physical description, photos, minimum bid price, and contact information;
  - b. Environmental review (MEPA); and,
  - c. Report to Land Board, etc.
2. Parcels being considered for acquisition by DNRC, including:
  - a. Location;
  - b. Description of parcel and amenities; and,
  - c. Report to Land Board, etc.

## 5. HOW TO PURCHASE LAND

### a. GENERAL INFORMATION

1. Information on all land offered for sale will be on the DNRC Land Banking website: [http://dnrc.mt.gov/trust/land\\_banking/](http://dnrc.mt.gov/trust/land_banking/)
2. The website will be updated frequently with information on the availability and status of parcels nominated for sale.
3. If you are interested in purchasing a parcel, download the information from the website or request information from the local land office or the DNRC office in Helena (see Appendix C for contact information).
4. Factors in evaluating land for sale:
  - a. The availability of land for sale will be determined, in part, by the amount of income presently generated by the parcel. Land generating below average income is more likely to be offered for sale than land generating income at, or above average.
  - b. Additional limitations on land available for sale includes land that:
    - i. Is wholly surrounded by public land; or,
    - ii. Is wholly surrounded by conservation easement; or,
    - iii. Has significant habitat for threatened and endangered species; or,
    - iv. Extinguishes existing access to public land or historic access to private land so as to create an isolated parcel.
5. Criteria for exchanging title:
  - a. Title for land sold by the state will be conveyed by a Patent, Grant Deed, or Quit Claim deed, as deemed appropriate by DNRC. DNRC does not provide title insurance, however the purchaser may purchase title insurance, if desired.
  - b. When purchasing property, DNRC requires from the seller a Warranty Deed and an ALTA extended coverage title insurance policy or other appropriate title insurance as determined by DNRC.
6. Timeline
  - a. **DNRC will accept nomination forms from October 1, 2004 to January 31, 2005**, at which time the need to accept further nominations will be assessed. We will notify the public via the DNRC website if nominations are reopened after January 2005.
  - b. Purchase or acquisition of land takes time, as show in the flowcharts in Appendix B. In general, time from initiation to completion of sales to the public is 10 to 15 months, and 6 to12 months for acquisition by DNRC.

## **b. NOMINATION and SALE**

A general outline of the sale process is as follows:

1. Nomination (Rule IV)
2. Evaluation (Rule IV)
3. Land Board approval (Rule IV)
4. Appraisal (Rule IV)
5. Minimum bid set by Land Board (Rule IV)
6. Public oral auction (Rule V and Rule VI)
7. Lessee settlement (if applicable, Rule VII, Rule VIII)
8. Closing (Rule IX)

Nomination of a parcel for sale can **only** be initiated by the Land Board, DNRC, or the lessee. Nomination of a tract for purchase by the State can be made by anyone (see Glossary for definitions of parcel and tract).

### **i. If You Are A Lessee**

If you are a lessee, and would like to nominate land you **presently** have under lease with the state, it's best to begin the process by consulting with the local land office before submitting a nomination form. The local office can advise you whether your lease parcel meets initial criteria for sale. Only land presently under lease is eligible for nomination by the lessee.

- a. Lessee's may nominate any combination of parcels held under one lease, regardless of whether the land is contiguous, or the area exceeds 640 acres. Parcels under different leases must be nominated separately, on a separate nomination form.
- b. There is a One Hundred Dollar (\$100.00) non-refundable processing fee for each nomination application unless land nominated is contained in one section and under one lease. In these situations, a nomination form must be filled out for each parcel, but is considered one nomination with a charge \$100.00 for the entire section. Nomination forms will not be accepted without the appropriate fee.
- c. **Be aware that even though a parcel meets initial criteria for sale, that does not guarantee the parcel will be offered for sale.**
- d. Lessee's may propose a land exchange rather than sale of a lease parcel. Discuss this option with the local land office prior to nominating a parcel for sale. If the Department or the Land Board nominates your lease for sale, you will be notified, and have 60 days to inform the Department if you wish to pursue a land exchange in lieu of sale.
- e. Obtain a nomination form from your local land office, fill out completely, and return to the local land office with a \$100.00 non-refundable processing fee.
  - i. Each nomination form requires a \$100.00 non-refundable processing fee.
- f. Once it has been determined that a parcel is eligible for sale, the lessee must submit within 30 days of notification by the state a \$1000.00 earnest money deposit and complete a purchase agreement with DNRC.
- g. If the lessee fails to submit earnest money within 30 days of notification, the parcel may be removed from the sale list, at the discretion of DNRC.
- h. DNRC may choose to continue to offer the parcel for sale.

- i. If the lessee is the successful bidder, the earnest money will apply to the closing costs and purchase price.
- j. Once the minimum bid price has been set, prospective purchasers must submit a bid deposit equal to one half (50 percent) of the amount of the minimum bid postmarked no later than 45 days prior to the date of the auction.
  - i. The deposit must be in the form of a certified check or cashier's check drawn on a Montana bank (§77-2-363 (2), MCA).
- k. If the lessee initiates the sale, and then cancels the sale after DNRC has given notice of the auction, the lessee shall pay all costs incurred by DNRC in preparing the sale, including but not limited to:
  - i. Any costs incurred for preparation of MEPA documents, appraisal, survey, cultural resource inventory, natural resource inventories, public hearings, other costs that may be incurred by DNRC;
  - ii. The earnest money and bid deposit paid by the lessee must be applied toward costs incurred by DNRC for the canceled sale; and,
  - iii. Any amount of earnest money and bid deposit remaining after payment of department costs must be returned to the lessee.

## **ii. If you are not a lessee**

- 1. Download the Handbook from the website.
- 2. Evaluate parcels from information available on the website.
- 3. If additional information is needed, contact the land office in which the parcel is located (see Appendix C for contact information).
- 4. Once the minimum bid price has been set, prospective purchasers must submit a bid deposit equal to one half (50 percent) of the amount of the minimum bid postmarked no later than 45 days prior to the date of the auction.
  - a. The deposit must be in the form of a certified check or cashier's check drawn on a Montana bank (§77-2-363 (2), MCA).

## **iii. Sale Process for All Prospective Purchasers (Lessee and non-lessee)**

- 1. Land must be sold to the highest bidder who consummates the sale.
  - a. The lessee has the preference right to match the high bid (§77-2-324, MCA).
- 2. The purchaser pays closing costs, including but not limited to:
  - a. the cost of the appraisal;
  - b. title insurance;
  - c. filing fees;
  - d. advertising; and,
  - e. survey, if necessary.
- 3. The DNRC retains the bid deposit of the successful bidder and will return the bid deposits of all unsuccessful bidders within five BUSINESS days following the auction.
- 4. If the highest bidder fails to consummate the sale for any reason, DNRC may offer the parcel to the next highest bidder at the final sale price (high bid). If the next highest bidder, or a subsequent bidder, in sequence of bid amount, agrees to the terms of the sale, that bidder shall complete a purchase agreement and submit a bid deposit to the department.
- 5. If the final bidder who agrees to consummate the sale fails to comply with the terms of the sale for any reason, that bidder's bid deposit is forfeit and must be credited to



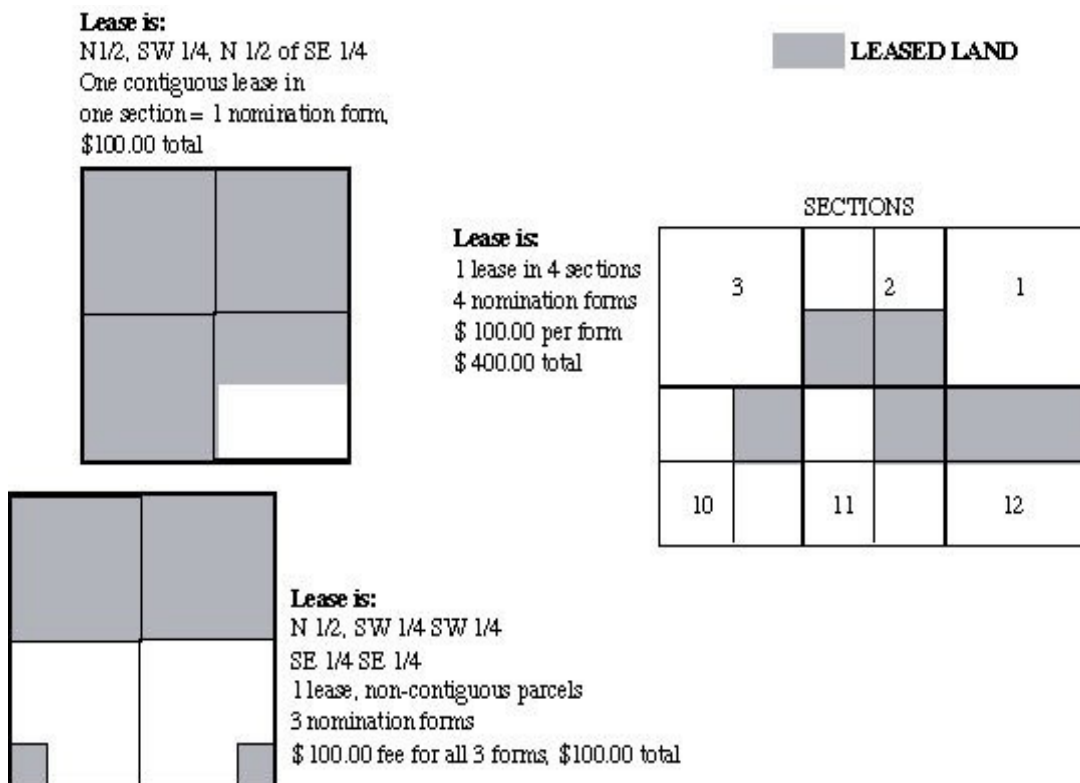
the Land Banking fund, after deduction of any sale costs incurred by the department (§77-2-363 (2) (b), MCA.

#### iv. Fees and Closing Costs

The following fees and costs are associated with the nomination and sale or acquisition of land:

##### 1. Nomination application

- a. There is a One Hundred Dollar (\$100.00) non-refundable processing fee for each nomination application unless the land nominated is contained in one section and under one lease. In these situations, a nomination form must be filled out for each parcel, but is considered one nomination with a charge \$100.00 for the entire section. Nomination forms will not be accepted without the appropriate fee. The following diagram shows possible nomination scenarios and associated fees:



##### 2. Closing costs for sale or acquisition of land

- a. Generally, the closing costs follow the usual and customary costs associated with real estate transactions.
  - i. DNRC **does not** furnish title insurance. The purchaser may purchase title insurance, if desired.
  - ii. DNRC requires that the **seller** provide an ALTA extended coverage title insurance policy on all parcels purchased by DNRC.
  - iii. Cost of advertising is a closing cost of the purchaser of trust land.
- b. Additional costs
  - i. There may be additional requirements and fees, which may include, **but are not limited to:** Archaeological Survey, ALTA Survey, boundary survey, Infrastructure Analysis Report, Phase I Report, Preliminary Soil Investigation

Report, Advertising Fees and Appraisal Fees. Any expenses related to these or additional requirements are the responsibility of the lessee which may be reimbursed by the successful bidder in the event the lessee is not the successful bidder at the time of auction.

- ii. DNRC will provide an estimate of closing costs at the time a purchase agreement is completed.

c. Penalties

- i. There is a penalty for withdrawing from the sales process after a certain point in the transaction, as follows:

A. Lessee nominated:

- I. A lessee may withdraw from a sale initiated by the lessee any time prior to 30 days before the auction date by sending a certified letter **postmarked more than 30 days prior to the auction date** notifying of the withdrawal (Rule VII).
- II. The lessee will not be responsible for any costs related to the sale if:
  - 1. The lessee withdraws within 30 days of receiving notice to submit earnest money and purchase agreement either by not sending in earnest money, or by notifying DNRC by certified mail. This is prior to DNRC initiating public notice of the sale.
  - 2. If the lessee fails to notify DNRC prior to initiating public notice for the sale, **the lessee will pay for the following DNRC incurred costs from earnest money and bid deposit:**
    - a. MEPA, appraisal, survey, cultural resource inventory, natural resources inventories, public hearings, advertising and public notices, and any other costs incurred by DNRC related to the sale.
- III. **If the lessee fails to notify DNRC more than 30 days before the auction, the sale will not be cancelled.**

B. Non-Lessee nominated:

- I. If the high-bidder of a sale fails to complete the sale **for any reason**, they will forfeit the bid deposit (Rule VIII (10)).

## 6. ACQUISITION BY THE STATE

### a. GENERAL INFORMATION

- 1. Information on all tracts proposed for acquisition by DNRC will be on the DNRC Land Banking website: [http://dnrc.mt.gov/trust/land\\_banking/](http://dnrc.mt.gov/trust/land_banking/)
- 2. The website will be updated frequently with information on the availability and status of tracts nominated for acquisition.
- 3. If you are interested in nominating a tract, download the nomination form and Handbook from the website or request these materials from the local land office or the DNRC office in Helena (see Appendix C for contact information).

### b. HOW TO NOMINATE

Anyone can nominate a parcel for acquisition by DNRC, and DNRC reserves the right to prioritize activities and tracts for acquisition. A preliminary screening of potential nominations must occur with the Area Office prior to a nomination form being filled out by a potential seller. Nominations must be on a form supplied by DNRC, and each form must include a \$100.00 **non-refundable** processing fee. Incomplete forms will not be accepted.



Adjacent landowner information is generally available on the internet (<http://gis.mt.gov/>) or at the Clerk and Recorder's office in your county.

**c. ACQUISITION CRITERIA AND PROCESS**

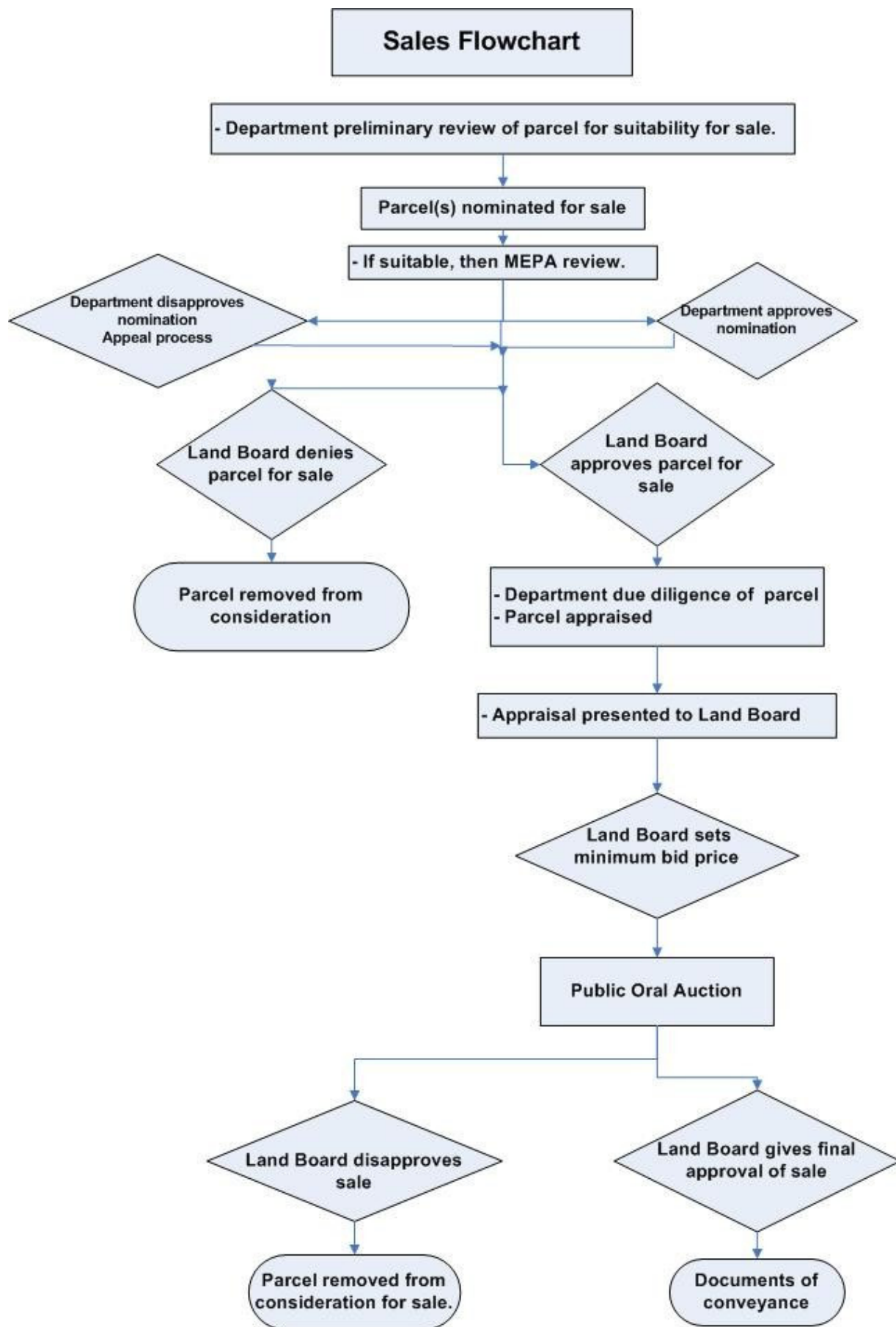
1. Once a tract has been nominated for sale, a seller's disclosure statement must be provided within 60 days of nomination on a form provided by DNRC.
2. DNRC will conduct a review of the tract, including the financial feasibility of acquiring and managing the tract; existing access; and potential for multiple-use.
3. If DNRC determines a tract is not suitable for acquisition, the tract will be removed from nomination and eliminated from further review.
4. DNRC may enter into a purchase agreement or option on a tract conditional on the approval of the Land Board.
5. An appeal process is available (Rule XIII (6)).
6. Preliminary review taken to Land Board for suitability decision.
7. Detailed due-diligence report prepared and evaluated by DNRC (Rule XV).
8. Notification of appropriate entities of pending acquisition.
9. Due-diligence report and DNRC recommendation taken to the Land Board for their consideration (Rule XVI).
10. Upon Land Board approval, land acquisition finalized and documents exchanged (Rule XVII). Total time for acquisition is estimated to be 6 to 12 months.

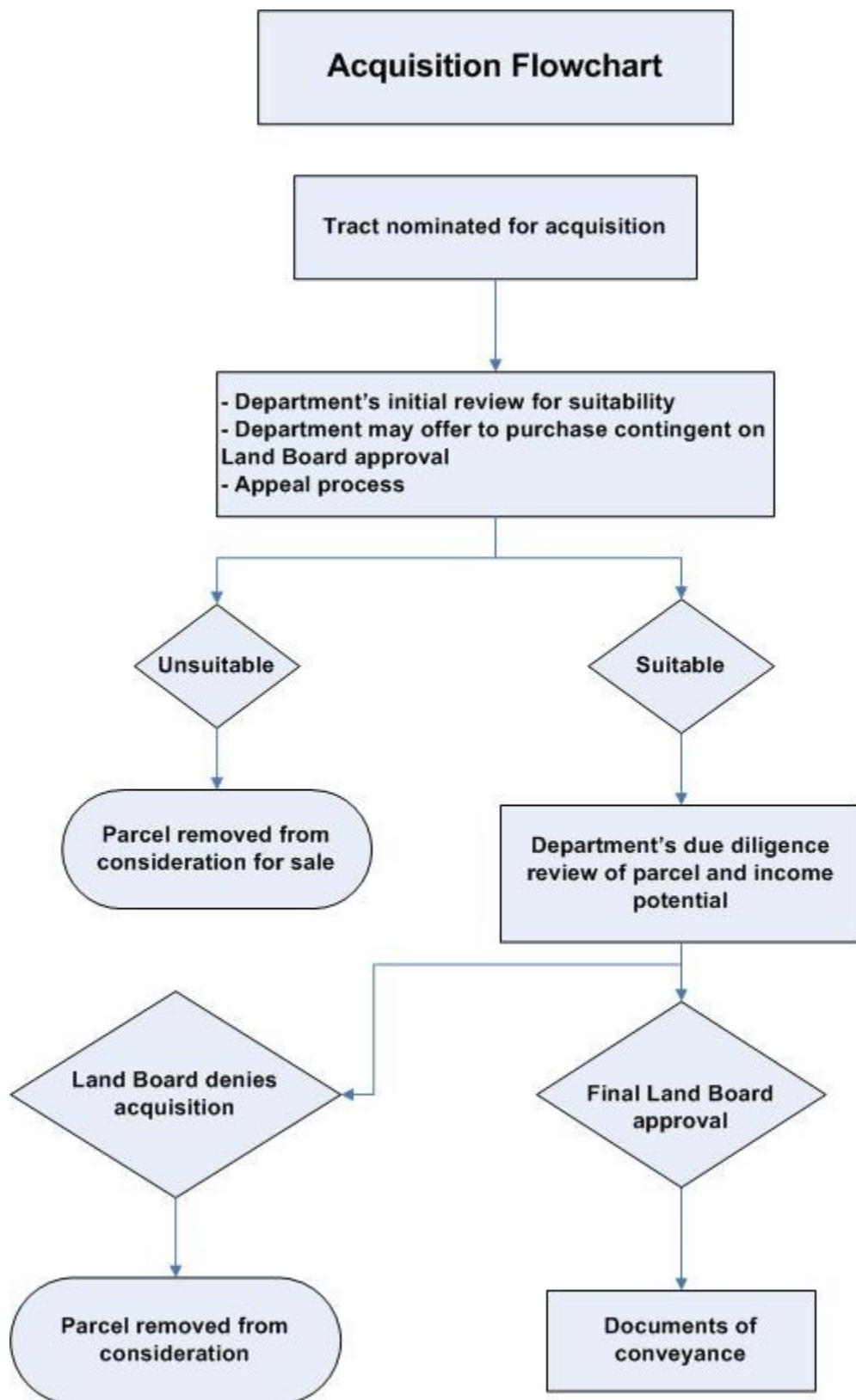
## **APPENDIX A GLOSSARY OF TERMS**

1. "Bid deposit" means a certified check or cashier's check drawn on any Montana bank equal to 50% of the minimum sales price submitted in connection with a bid as an assurance of the performance of a contractual or promissory requirement.
2. "Earnest money" means a sum of money paid by a prospective purchaser as proof of that person's intention to complete the purchase transaction.
3. "Isolated parcel" means any state land not possessing a legal right of access by the public. This includes land not accessible by navigable waterway, or which is totally surrounded by private land with no public access road, trail, or other designated route. Corner to corner contact (diagonal) does not provide an access point to public land. Limited access to private land to individuals for hunting, recreation, or other purposes does not constitute public access.
4. "Lessee" means the current lease holder of any agricultural, grazing, commercial, cabin or home site, or other surface lease of state trust land.
5. "Lessee preference" means the right of the present lessee of trust land to match the high bid in a proceeding for the sale or lease of trust land.
6. "Parcel" means one section or less, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office or in the Departments records.
7. "Tract of record" means a distinct portion of land, irrespective of ownership, that can be identified by legal description, independent of any other portion of land, using documents on file in the records of the county clerk and recorder's office.

**APPENDIX B**

**FLOWCHARTS FOR SALE AND ACQUISITION**





## APPENDIX C CONTACT INFORMATION

### COUNTIES

### AREA OFFICE

Beaverhead  
Broadwater  
Cascade  
Gallatin  
Glacier

Jefferson  
Lewis & Clark  
Madison  
Meagher  
Park

Pondera  
Teton  
Toole  
Liberty

#### **Central Land Office**

Gavin Anderson, Planner  
8001 N. Montana Avenue  
Helena, MT 59601  
Ph: 458-3502

Carter  
Custer  
Dawson  
Fallon  
Powder River

Prairie  
Richland  
Rosebud  
Wibaux

#### **Eastern Land Office**

Rick Strohmyer, Area Manager  
PO Box 1794  
Miles City, MT 59301-1794  
Ph: 232-2034

Blaine  
Chouteau  
Daniels  
Fergus  
Garfield  
Golden Valley

Hill  
Judith Basin  
Sheridan  
McCone  
Petroleum

Phillips  
Roosevelt  
Valley  
Wheatland

#### **Northeastern Land Office**

Clive Rooney, Area Manager  
PO Box 1021  
Lewistown, MT 59457-1021  
Ph: 538-7789

Flathead  
Lake  
Lincoln  
Sanders

#### **Northwestern Land Office**

Jon Dahlberg, Area Manager  
2250 Highway 93 North  
Kalispell, MT 59901  
Ph: 751-2240

Big Horn  
Carbon  
Musselshell  
Stillwater

Sweet Grass  
Treasure  
Yellowstone

#### **Southern Land Office**

Jeff Bollman, Land Use Planner  
Airport Business Park  
1371 Rim Top Dr.  
Billings, MT 59105-1978  
Ph: 247-4404

Deer Lodge  
Granite  
Mineral  
Missoula

Powell  
Ravalli  
Silver Bow

#### **Southwestern Land Office**

Liz Mullins, Land Use Planner  
2705 Spurgin Road  
Missoula, MT 59801  
Ph: 542-4345

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